

(A) The requesting agency fails to meet or comply with any of the criteria for designation set forth in the Act, regulations, and instructions, of

(B) The Administrator determines that another qualified applicant is better able to provide official services in the assigned area.

(2) *Automatic termination.* Failure to pay the user fees prescribed by the Service for supervisory costs related to official inspection and weighing services within 30 days after due shall result in the automatic termination of the designation. The designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days after the termination.

(3) *Voluntary cancellation.* An agency may request that its designation be canceled by giving 90 days written notice to the Service.

(4) *Suspension or revocation of designation.* (i) *General.* A designation is subject to suspension or revocation, under section 7(g)(3) of the Act, by the Service, whenever the Administrator determines that:

(A) The agency has failed to meet one or more of the criteria specified in section 7(f) of the Act or the regulations for the performance of official functions, or otherwise has not complied with any provision of the Act, regulations, or instructions, or

(B) Has been convicted of any violation of other Federal law involving the handling or official inspection of grain.

(ii) *Summary suspension.* The Service may, without first affording the agency (hereafter referred to in this paragraph as the “respondent”) an opportunity for a hearing, suspend a designation or refuse to reinstate a designation when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the designation and considers such action to be in the best interest of the official inspection and weighing system. A suspension or refusal to reinstate a suspended designation shall be effective upon the respondent’s receipt of a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service

shall afford the respondent an opportunity for a hearing under paragraph (h)(4)(iii) of this section. The Service may terminate the action if it finds that alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service can be and are made by the respondent.

(iii) *Other than summary suspension.* Except as provided in paragraph (h)(4)(ii) of the section, before the Service revokes or suspends a designation, the respondent shall be: (A) Notified by the Service of the proposed action and the reason(s) therefor, and (B) afforded an opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR part 1, subpart H). Before initiating formal adjudicatory proceedings, the Service may, at its discretion, afford the respondent an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If, as a result of the informal conference, a consent agreement is reached, no formal adjudicatory proceedings shall be initiated.

(i) *Provision of services following suspension or termination.* If the designation of an agency is suspended, terminated, or the renewal of a designation is not granted, the Service shall attempt, upon a finding of need, to arrange for a replacement agency. If a qualified replacement agency cannot be designated on a timely basis, a qualified agency, if available, shall be designated on an interim basis. If a qualified agency is not available on an interim basis, the Service shall provide needed services on an interim basis.

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§ 800.197 Approval as a scale testing and certification organization.

(a) *Who may apply.* Any State, local government, or person may request approval to perform scale testing and certification under the Act.

(b) *When and how to apply.* A request for approval to perform scale testing

and certification under the Act should be filed with the Service not less than 90 calendar days before the requested action's effective date. A request for approval to perform scale testing and certification shall:

(1) Show or be accompanied by documents which show all information required by the Service;

(2) Certify that each employee scheduled to perform official scale testing and certification services is competent to test weighing equipment and has a working knowledge of the regulations and instructions applicable to such services;

(3) Be accompanied by the fee prescribed in § 800.71; and

(4) Be signed by the applicant or its chief operating officer.

(c) *Review of applicant.* The review of an applicant for authority to perform scale testing and certification shall include an evaluation of the applicant's policies and procedures for testing and certifying scales for Class X and Class Y weighing.

(d) *Termination*—(1) *Voluntary.* A scale testing and certification organization may request cancellation of its approval by notifying the Service.

(2) *Suspension or revocation of approval*—(i) *General.* An approval is subject to suspension or revocation whenever the Administrator determines that the approved organization has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(ii) *Summary suspension.* The Service may, without first affording the organization an opportunity for a hearing, suspend an approval or refuse to reinstate an approval when the suspension period has expired, pending final determination of the proceeding whenever the Service has reason to believe there is cause for revocation of the approval and considers such action to be in the best interest of the official weighing system. A suspension or refusal to reinstate a suspended approval shall be effective when the organization receives a notice from the Service. Within 30 calendar days following the issuance of a notice of such action, the Service shall give the organization an oppor-

tunity for a hearing under paragraph (d)(2)(iii) of this section. The Service may terminate its action if it finds that alternative managerial, staffing, or operational arrangements satisfactory to the Service can be and are made by the organization.

(iii) *Other than summary suspension.* Except as provided in paragraph (d)(2)(ii) of this section, before the Service revokes or suspends an approval, the organization shall be notified by the Service of the proposed action and the reason(s) therefor and shall be given an opportunity for a hearing. Before the Service initiates a hearing, it may, at its discretion, give the organization an opportunity to present its views on the proposed action and the reason(s) therefor in an informal conference. If a consent agreement is reached during the informal conference, no formal adjudicatory proceedings shall be initiated.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 0580-0012)

[49 FR 30915, Aug. 2, 1984, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.198 Contracts.

(a) *Services contracted and who may apply.* The Service may enter into a contract with any person, State, or governmental agency to perform on an occasional basis:

(1) Specified official sampling, laboratory testing, or other similar objective technical activities involved in the testing of grain for official factors or official criteria, and

(2) Monitoring activities in foreign ports with respect to export grain that has been inspected and weighed under the Act.

(b) *Restrictions*—(1) *Conflict of interest.* A person, State or governmental agency with a conflict of interest prohibited by section 11 of the Act or § 800.199 shall not be eligible to enter into a contract with the Service.

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in appeal inspection or Board appeal inspection